

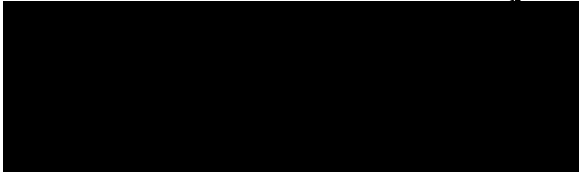


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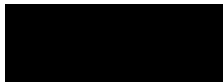
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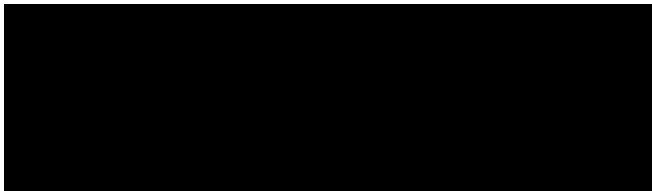
IN RE:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Madrid, Spain, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Algeria who entered the United States with fraudulent documents on January 18, 1995. The applicant applied for political asylum and his application was denied. The applicant was subsequently placed in removal proceedings and on June 22, 1995, he was granted voluntary departure from the United States until December 22, 1995. The applicant failed to comply with the terms of his voluntary departure order and was removed from the United States on November 7, 1997. The applicant was found inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. On December 19, 1996, the applicant married a U.S. citizen. He is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The officer in charge (OIC) concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the Officer in Charge, dated October 2, 2003.

On appeal, counsel states that the OIC erred in finding the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. §1182(a)(9)(B)(i)(I). Counsel asserts that the applicant was unlawfully present in the United States for more than 180 days, but less than one year subjecting him to a three-year bar to admission pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. §1182(a)(9)(B)(i)(II). Counsel further contends that the applicant has complied with the requirement of the three-year bar and now seeks a waiver of inadmissibility for having entered the United States with fraudulent documents on January 18, 1995. Counsel asserts that the applicant's spouse will suffer extreme hardship if the waiver is denied. *See* Appeal of Denial of Waiver of Inadmissibility under INA § 212(i), undated.

In support of these assertions, counsel submits an affidavit of the applicant's spouse; a letter from a physician treating the applicant's spouse; a letter from a therapist treating the applicant's spouse and a letter from a physician treating the parents of the applicant's spouse. The record also contains a letter confirming the enrollment of the applicant's spouse in a Master's program; a letter from the pastor of the church of the applicant's spouse; a letter verifying that the applicant and his spouse reimbursed the government for the airline costs associated with his removal from the United States; a copy of United States Department of State (DOS) public announcement regarding travel to the Middle East and North Africa; a copy of a DOS background note on Algeria, dated October 2003; a copy of a DOS Consular Information Sheet on Algeria, dated October 27, 2003 and a copy of an excerpt from a DOS report addressing country conditions in Algeria during 2002. The entire record was considered in rendering a decision on the applicant's appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

- (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . is inadmissible.

....

(v) Waiver. - The Attorney General [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

On January 18, 1995, the applicant entered the United States with a fraudulent passport. The applicant remained in the United States until he was removed on November 7, 1997. The applicant, therefore, accrued unlawful presence from April 1, 1997, the date on which unlawful presence provisions under the Act became effective, until November 7, 1997, the date of his removal from the United States. As a result, the applicant was inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act for having been unlawfully present in the United States for a period of more than 180 days, but less than one year. Pursuant to section 212(a)(9)(B)(i)(I) of the Act, the applicant was barred from again seeking admission within three years of the date of his departure. More than three years have passed since the applicant departed from the United States; he is, therefore, no longer inadmissible as a result of his unlawful presence.

The AAO notes that the decision of the OIC erroneously finds that the applicant is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year subjecting the applicant to a 10-year bar to admission. The applicant accrued 218 days of unlawful presence between April 1 and November 7, 1997 rendering the decision of the OIC incorrect. Further, the decision of the OIC fails to find the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry into the United States by fraud or willful misrepresentation. As noted, the applicant used fraudulent documents to obtain entry to the United States on January 18, 1995. The AAO finds, however, that the error of the OIC is harmless to the extent that the decision still considers the application for waiver under the correct standard; both sections 212(a)(9)(B)(v) and 212(i) require a finding of extreme hardship in order to grant a waiver of inadmissibility.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

Counsel contends that the applicant's spouse would suffer extreme hardship as a result of relocation to Algeria. Counsel states that the applicant's spouse has close familial ties in the United States and does not have any relatives in Algeria. *See Appeal of Denial of Waiver of Inadmissibility under INA § 212(i) at 3-4.* According to the assertions of the applicant's spouse, she spends a lot of time with her parents owing to their medical conditions. *See Letter from Amy E. Andersen, MD, dated November 24, 2003.* The AAO notes that the letter from the physician treating the parents of the applicant's spouse simply lists the medications prescribed to Gwendolyn and Leonard Timm, respectively. The letter does not establish that the parents of the applicant's spouse require any special care for their conditions and the record does not demonstrate that the applicant's wife provides care to her parents beyond her relationship with them as their daughter. Counsel also points to the church involvement, employment and community ties of the applicant's spouse characterizing them as "unusually strong." *See Appeal of Denial of Waiver of Inadmissibility under INA § 212(i) at 1.* Counsel provides a letter from the pastor of the church to which the applicant's spouse belongs calling the applicant's spouse a fundamental partner in the church's effort to live its faith in Chicago. *See Letter from Robert B. Donovan, dated May 23, 2003.* In addition, the applicant's spouse is enrolled in a

graduate program at DePaul University where she serves as a graduate assistant. The Assistant Dean of the School of Computer Science, Telecommunications and Information Systems refers to the applicant's spouse as "an intelligent, hardworking person in everything that she does" and indicates that there are no programs abroad equivalent to the one offered at DePaul in which the applicant's spouse is enrolled. *See* Letter from Anne Morley, dated May 3, 2003. Counsel asserts that in addition to leaving a full life in the United States, the applicant's spouse would confront difficulties of religion and gender discrimination in Algeria rendering her unable to find employment, unsafe in her daily living and unable to raise the couple's potential children in a country with substandard health care and educational options. *See* Appeal of Denial of Waiver of Inadmissibility under INA § 212(i) at 4-6.

Counsel does not establish extreme hardship to the applicant's spouse if she remains in the United States maintaining her access to adequate healthcare, close proximity to family members, chosen employment and career path as well as general safety and civil rights. Counsel submits a letter from a physician treating the applicant's spouse to support the proposition that the applicant's spouse suffers "headaches, fatigue, irritable bowel syndrome, heartburn, weight fluctuation, insomnia, anxiety and depression" as a result of separation from the applicant. *See* Letter from Nancy A. Zamora, MD, dated December 1, 2003. Further, counsel provides a letter from DePaul University Counseling Services listing dates on which the applicant's spouse has had contact with the center. *See* Letter from Sera Morelli, dated December 1, 2003. The AAO notes that the record does not establish the nature or extent of treatment provided to the applicant's spouse to address her condition. Although the record demonstrates that the applicant regularly visits counseling services at her educational institution for individual psychotherapy, the record does not establish the progress of her treatment or the severity of her condition. The record does not demonstrate the success of any prescribed treatment in assisting the applicant's spouse. A statement of the symptoms of the applicant's spouse, standing alone, does not warrant a finding of extreme hardship based on emotional hardship.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's wife endures hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship, based on the record.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.